

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

MAIL CLASSIFICATION SCHEDULE LANGUAGE
FOR NONPOSTAL SERVICES

DOCKET No.
MC2010-24

RESPONSE OF UNITED STATES POSTAL SERVICE
TO ORDER NO. 1575 THAT PROVIDED DETAILS OF, AND
REQUESTED RESPONSES REGARDING, MCS LANGUAGE FOR
NONPOSTAL SERVICES
(December 26, 2012)

By means of Order No. 1575 (December 11, 2012), the Commission took major strides down the path to a post-PAEA Mail Classification Schedule (MCS) that identifies and describes all nonpostal products, both market dominant and competitive. Navigation along this path commenced a little over five years ago.¹ Order No. 1575 thus accomplishes a comprehensive consolidation of dockets and complexity, each of which has grown over the intervening years regarding the allowable range of nonpostal services.

Order No. 1575 requests input from the Postal Service on MCS language regarding two specific nonpostal products: *Philatelic* and *Training and Related*

¹ On December 20, 2007, the Commission initiated this proceeding to fulfill its responsibilities under 39 U.S.C. § 404(e)(3), adopting a procedural schedule which, among other things, directed the Postal Service to submit a sworn statement by no later than March 19, 2008, "identify[ing] and provid[ing] a complete description of each nonpostal service offered by the Postal Service on the date of enactment of the PAEA." (Citing PRC Order No. 50, at 2.)

Order No. 154 at 1. The respective Postal Service pleadings that provided draft MCS language are listed by Order No. 1575 in footnote 5, at page 6, beginning with Docket No. MC2008-1, *United States Postal Service Notice of Filing of Proposed Mail Classification Schedule Language for Six Nonpostal Services Pursuant to Order No. 120* (November 7 2008).

Services. Id. at 12-13, 22 and 24. This pleading commends the comprehensive, detailed approach taken by the Commission and provides the requested input. It also provides limited comments upon other MCS changes first announced in Order No.1575 and what may be the Commission's "minor editorial adjustments," (see *id.*, at 5, 7, 17, 24) (without suggesting alternative MCS language), thereby pointing out locations in the MCS where room for further improvement may yet be found. Minor editorial matters include a non-sentence added in an MCS product description.² The Postal Service also uses this Response as an opportunity to address briefly its concern about its flexibility and a broader discussion of the role words of limitation can have in the MCS, such as the tie between products and locations of postal facilities. In sum, however, the Postal Service encourages the Commission to conclude this major step toward issuance of the Mail Classification Schedule.

In the body of Order No. 1575, the Commission discusses specific language needed to complete the descriptions of the *Philatelic and Training Facilities and Related Services* nonpostal products. *Id.* at 12-13, 22. See also, p. 24, Ordering Paragraph 2. The Postal Service is providing appropriate legislatively formatted language for MCS §§ 1702 (*Philatelic Sales*) and 1708 (*Training Facilities and Related Services*) in Appendix 1. The former clarifies and integrates application of the fee for custom orders, while the latter indicates the

² Appendix B, Page 11 of 13, to Order No. 1575, in the Description for 2707.1 shows, "For instance, for parking facilities, office space, antenna towers, advertising space, storage, and retail lobby space." While the Postal Service was not the source of this language (and is unable to bless the syntax), the examples are consistent with its understanding of the product being described.

current addresses for respective training facilities in Norman, Oklahoma and Potomac, Maryland.

The Postal Service's November 7, 2008 pleading referenced at the end of footnote 1, above, commenced discussion within the context of MCS language for nonpostal services of the tie, or proximity between, specific postal facilities and where postal service is rendered. The Postal Service's proposed description for *Photo Service* reads: "Photo Service is offered to support customers **who apply for passports at designated postal facilities pursuant to U.S. Department of State regulations.**" [Emphasis added here.] The tie between photographs and postal facilities is one that exists solely in the relationship between the Postal Service and the State Department, by which both agencies understand where passport applications will be accepted, processed to whatever extent called for in the interagency agreement, and then furnished to the State Department. No requirement exists that any photograph be taken 1) by a Postal Service employee, 2) at the postal facility where the application is being accepted, or 3) at the passport fair or philatelic event or alternate access point (administered by a postal facility) where temporary passport acceptance has been arranged; what the postal employee must do is confirm that the photograph (whether taken by the postal employee or brought by the applicant) depicts the individual appearing in person and applying for a passport. So long as the location where the photo is taken and the passport application is accepted as "designated" within the meaning of the State Department / Postal Service

interagency agreement, the Postal Service would understand that it is also complying with MCS language that is set forth in Order No. 1575.

The Postal Service would accordingly like to make clear that it does not view the implantation of locative language into the MCS as necessarily imposing constraints upon where it can or cannot provide competitive or market dominant nonpostal services. This understanding is consistent with the thinking that led the Postal Service to propose the language for both Photo Service and Photocopying Service that it did.

Order No. 1575 makes two MCS changes for Photo Service, both of which can serve to reduce the Postal Service's flexibility. The first is to finalize the product name not as "Photo Service" (*compare*, p. 2 of the November 7, 2008 pleading *with* discussion in Order 1575 n.34 noting Postal Service omission of "Passport" from product name, but nonetheless inserting "Passport" as, in effect, a word of limitation to arrive at "Passport Photo Service.")

Looking back to the draft MCS sentence, part of which is highlighted, above, the Postal Service intention is clearly to begin providing Photo Service in the context of processing passport applications. So changing the product name to include "Passport" as Order No. 1575 does limit Postal Service options in a larger context. Postal Service management today certainly prefers to maximize its flexibility within the bounds allowed by the PAEA, and subject to appropriate Commission review. As such, a Photo Service name and description that do not feature "Passport" are preferable to ones that do. The Postal Service does not formally object to addition of "Passport" to the "Photo Service" product name.

Order No. 1575 forges express ties between postal facilities and where specific products may be offered.³ Yet as explored in great detail during recent dockets such as N2009-1 (SBOC), N2010-1 (Five-Day Delivery), N2011-1 (RAOI), and N2012-2 (POStPlan), use of retail counters in traditional brick and mortar Post Offices is declining. On the other hand, at times, local, or perhaps even regional, postal officials organize themselves to attend a special event where some range of services may be offered. A first-day issuance ceremony, for example, may entail first-day availability of a special stamp, such as the January 7, 2003, First Day of Issue for the Equal Justice stamp commemorating Thurgood Marshall, bearing ZIP Code 20066 in Washington, DC. This would also constitute a philatelic opportunity when a range of philatelic products and other postal are for sale and public relations events occur (sale of stamps, First-Day covers, special services, collection box, *etc.*) are made available. Some conventional postal services are usually available, with the specific range determined by local officials (or senior ones) based on a judgment made appropriate to the occasion. Perhaps to nobody's surprise, such special events are often not held at postal facilities.

Furthermore, disasters can sometimes lead to temporary reorganization of operations on still larger scales; such as in the aftermaths of hurricanes Sandy or Katrina. In such situations, MCS restrictions on the locations of offering particular services may create unnecessary limitations.

³ See OLRP, Order No. 1575 at 7; Alliances with the Private Sector ..., *id.* at 10, and; "[Passport] Photo Service, Officially Licensed Retail Products (OLRP) and Photocopying Service Products" (*id.* at 22-23). As explained in greater detail below – in the Postal Service view, the availability of no product it offers should be confined to its own facilities absent statutory compulsion.

The Postal Service believes, therefore, that MCS language should not limit the provision of postal or nonpostal services to postal facilities absent clear demonstration of need.

The Postal Service has one qualm about the Electronic Postmark (EPM) Program MCS language. Specifically, the Public Representative proposed, and the Commission elected to incorporate the phrase “related to EPM technology, as licensed”, such that the entirety of 2709.1.b’s last sentence reads:

Once certified, the provider is authorized to use Postal Service licensed technology, intellectual property and patents related to EPM technology, as licensed.

The question involves the overlap among 1) the scope of what a provider is “certified” to do, 2) what “Postal Service licensed technology, intellectual property and patents” the provider is “authorized to use,” and 3) whether “related to EPM technology, as licensed” is a superset, subset, or exactly coextensive with (2). We can presume the absence of a conflict between (1) and (2) in isolation, or we would not have had that language in sum and by itself proposed; but the addition of (3) to the equation could alter the initial balance. Further, if something the Postal Service is licensing for use is not itself EPM technology, but other technology pertinent to the implementation of EPM, then (3) is discounting some of (2)’s scope. In some sense, the problem arises from the ambiguity in “licenses” in that one can both get and give a license, or both; use of “license” alone does not distinguish among these. Notwithstanding this latent ambiguity, the Postal Service is able to confirm that new section 2709.1.d (availability of a

backup verification service) is appropriate for inclusion and welcomed by the product's management.

On the whole, with certain general and specific exceptions noted above, the MCS language described in Order No. 1575 reaches reasoned conclusions regarding appropriate language. Complex areas, such as electronic postmark, exchange of various property rights, and philatelic sales, have all been examined in great detail with workable results attained. And if history is any guide, all MCS language will constitute art in progress, evolving over time.

WHEREFORE, the Postal Service urges the Commission to move forward with steps described in Order No. 1575.toward completion of a Mail Classification Schedule.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

Kevin Calamoneri
Managing Counsel,
Corporate and Postal Business Law

Richard T. Cooper
Chief Counsel, Business and Finance Law

Daniel J. Foucheaux, Jr.
Chief Counsel, Pricing and Product Support

Kenneth N. Hollies
David H. Rubin
Attorneys

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-3083; Fax -5402
December 26, 2012

1702 Philatelic Sales**1702.1 Description**

Philatelic items are stamp-related items that support the hobby of stamp collecting. They are intended to be collected by serious, casual and topical collectors and typically include a postage stamp or stamps. Examples of philatelic items include first day covers, ceremony programs, uncut press sheets, framed stamps, binders for storing stamps, stamp yearbooks, and philatelic guides.

1702.2 Price

All items	Not less than face value of included postage, and not more than face value of included postage plus \$300.
Handling – Orders mailed to domestic United States destinations ¹	
Orders up to \$50	\$1.25; <u>add \$2.00 for custom orders</u>
Orders over \$50	\$1.75; <u>add \$2.00 for custom orders</u>
Handling – Orders mailed to destinations outside of domestic United States ¹	
Orders up to \$50	\$6.25; <u>add \$2.00 for custom orders</u>
Orders over \$50	\$6.75; <u>add \$2.00 for custom orders</u>
Expedited Service	Actual Express Mail postage

Notes

1. No handling charge for philatelic items sent as part of a subscription for a series of philatelic items of a specified type, with a means of payment established in advance. ~~There is an additional charge for custom orders of stamps as shown in Stamp Fulfillment Services Mail Classification Schedule section.~~ The custom order fee is applied to stamp sales, including press sheets, when the customer requests configurations other than those listed for each item in the USA Philatelic catalog, specific plate positions, or specialized handling. The custom order fee does not apply to philatelic items, other than press sheets, or subscription program orders.

* * * * *

2708 Training Facilities and Related Services

2708.1 Description

- a. Training Facility and Related Services includes the rental of excess space in or on the grounds of the Postal Service's training facilities to outside parties.
- b. The facilities include meeting rooms, housing, and exercise areas. Available services include conference-related services such as food service and the rental of audio-visual equipment, and hospitality-related services such as lodging, fitness-related services, banquet services, and on-site sale of sundries.
- c. The Postal Service has two training facilities. One facility has a health clinic on site that charges for services. One facility makes training classes available to non-governmental organizations.
- d. The Postal Service sets the prices for training classes.
- e. The Postal Service contracts with a company to manage each facility. The management company is responsible for setting the prices for all other services and the Postal Service receives a negotiated percentage of net profits.
- f. Training Facility and Related Services does not include rental of space or provision of services to federal agencies or postal employees.
- g. Current service is available at the following locations:

Bolger Center
9600 Newbridge Drive
Potomac, MD 20854-4436

National Center for Employee Development
2701 E. Imhoff Road
Norman, OK 73071-4436.

2708.2 Prices

	(\$)
Training courses, including management, leadership, technical, and computer technology courses	35.00 to 9775.00
All other services (Price set by contractor)	Percentage of net profits